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AIRGRAM

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NO. ~~CONFIDENTIAL~~ XR PO4 3 IA
HANDLING INDICATOR

TO : DEPARTMENT OF STATE
Please pass (75)

INFO: ARA/CEN/H; INR/RAR.
SAN PEDRO SULA.

DEPT.PASS: Amembassies GUATEMALA, MANAGUA, SAN JOSE, SAN SALVADOR; USCINCSO.
" " " PANAMA, CINCLANT.

FROM : Amembassy TECUCIGALPA *1050 for* DATE: January 19, 1966. *1050 for*

SUBJECT : U.S. Honduran Dispute over the Swan Islands.

REF : Dept's CA-6394, December 20, 1965.

In response to cited instruction which requests Embassies to review existing disputes, we offer the following discussion of the long-standing dispute between the United States and Honduras over the Swan Islands. The history of the controversy we have drawn from the post's files, from local sources and from the study prepared by the Historical Office in 1961.

THE PROBLEM

Honduras claims the Swan Islands over which the United States exercises sovereignty. Great Swan and Little Swan are Caribbean islands located about 98 miles north of Patuca Point, Honduras. The western island, Great Swan, is two miles long, and eastern Little Swan is one and one-half miles long. Each is about one-half mile wide. A hurricane in 1955 swept away most of the trees and today the only vegetation consists of sparse bushes and shrubs. There is no water on the islands. Neither island has a permanent population. Little Swan is totally uninhabited. Great Swan has four or five employees **ILLEGIB** Weather Bureau, which has maintained a weather station 1914; two or three employees of the Federal Aviation Agency, which operates an aircraft radio beacon; several employees of Radio Swan, a "commercial broadcasting station"; and approximately a dozen British subjects from the Cayman Islands, who work for the other residents or raise cattle.

GROUP 3 - **ILLEGIB**
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FORM 3-62 DS-323

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Drafted by: *Reu* POI:REWhite/jmm 1/19/66 Contents and Classification Approved by: John W. Fisher, Counselor of Embassy

Clearances:

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from Tegucigalpa 1/19/66FACTS BEARING ON THE PROBLEM

1. The Government of Honduras bases its claim to sovereignty over the Swan Islands primarily on the contention that Spain discovered and incorporated the Swan Islands into its possession in the early sixteenth century. The GOH states that the extent of Spanish exploration in the northern Caribbean at that time excludes the possibility that the Swan Islands could have remained undiscovered until the 19th Century. Honduras quotes the Spanish Emperor Charles V who in 1519 declared that "by grant of the Holy Apostolic See and other just and legitimate titles, we are Lord of the West Indies Islands and mainland in the Ocean Sea, discovered and not yet discovered, and they are hereby incorporated into our Royal Crown of Castile". The Spanish title then passed, Honduras claims, to the Central American States and upon the dissolution of the United Provinces of Central America in 1839, the Islands remained under the exclusive jurisdiction of Honduras. According to the GOH, various acts of jurisdiction performed on or near the Mosquitia coast have included the Swan Islands. These acts allegedly include "apostolic and economic activities, the organizing of local governments, offers of land for colonization, granting of concessions and the like". Honduras also claims in support of its case: a) that by the Monroe Doctrine the United States denied the existence of unclaimed territory (res nullius) in the hemisphere, and b) that in 1843 Secretary of State Upshur declared that the rights of nations to territories discovered in the 16th century "must be determined by international law as understood at that time and not by revised and more enlightened opinion of three centuries later".

The Government of Honduras claims it can present proof of its sovereignty in the form of deeds, maps and records.

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Pg. 3 of A-221

From Tegucigalpa 1/19/66

to the United States and in the opinion of the Government of the United States "it would be easier to effect a satisfactory settlement of the contentions of the two governments if Honduras refrained from any attempt to take possession of the Islands..." As a result, Honduras postponed the expedition. Again in 1929 Honduras decided to establish sovereignty through a Honduran presence on the Swan Islands. On this occasion, the American Legation asserted U.S. sovereignty and expressed the hope that "the GOH will refrain from the performance of any act of assumption of jurisdiction over the Islands in question".

3. After 1929 Honduras continued to pursue the issue sporadically but without success until 1962. In Washington, on November 3 of that year, after discussions, President Kennedy and President VILLEDA Morales released a joint communiqué which stated that the "two Presidents agreed that their governments should seek on an urgent basis a solution to the question of the Swan Islands within the framework of the Inter-American System and taking into full account the rights and interests of both parties".

4. On March 20, 1963, President Kennedy and President Villeda Morales at San José, Costa Rica, agreed that with regard to the Swan Islands, the United States fully sympathized with Honduras. President Kennedy went on to explain the special problems we faced but stated that we hoped to resolve these problems by September so that we could find a concrete solution with the Hondurans.

CONSIDERATIONS

1. The Swan Islands issue carries in Honduras an emotional charge of potentially dangerous force. Frequent newspaper articles by prominent Hondurans "prove the Islas del Cisne to be an integral part of the Honduran nation". Periodically new "justifications" for the Honduran claim are presented in the newspapers and magazines. Many influential Hondurans who count themselves as warm friends of the United States profess to be deeply pained by what they consider our unjust stand on the Swan Islands.

2. Given the proximity of the Islands to Honduras, and the existence of a legal case sufficiently plausible for propaganda purposes plus the heady exhilaration that rewards the weak when they attack the strong, we should have no doubts that as long as the status quo continues Honduran Communists, leftists, Liberals, Nationalists, rightists and patriots will urge the Honduran claim until every school child in the country will identify and resent the "usurper of the Honduran patrimony". This image could grow to the extent that it might hamper our efforts to build a viable, democratic Honduran society ready to cooperate with the United States.

CONFIDENTIAL

3. A reading of the Guano Act leads us to the conclusion that Congress never intended that Act as a mechanism for acquiring sovereignty. In the case of Grafflin vs. Navassa Phosphate Company of New York a Federal Court stated: "The provisions of the law [the Guano Act] entirely negatives (sic) any idea that such islands were in any sense to become part of the territorial domain of the United States". It would seem, therefore, that our claim to the Swan Islands rests basically on the long and continued exercise of sovereignty rather than acquisition under the Guano Act.

4. While the conviction that the Swan Islands rightfully belong to Honduras is profoundly held throughout the country, it is also recognized that given the overwhelming disparity of power and influence between the two nations, Honduras has little chance to "regain" the islands unless the United States magnanimously agrees to negotiate the problem. Therefore for the United States to give on this issue would make us the archetype of charity, statesmanship and justice in Honduras. Its effects should also reverberate throughout Latin America. In fact, in a society where flair and the grand manner are revered, the chief value of the Swan Islands to American foreign policy may reside in the way we change their present status and the style and timing of that change. Would it not, for example, appreciably strengthen our posture if at the Buenos Aires Conference we could say "that true to its convictions regarding the responsibilities borne by the more powerful party in a dispute" the United States was prepared to adjust the status of the Swan Islands to the satisfaction of both parties?

CONCLUSIONS

1. Legally, the United States seems to have the better case. In the most famous dispute of this kind, the Island of Palmas case, the arbitrator stated "discovery alone, without any subsequent act cannot...prove sovereignty over the island". He also said "it cannot be sufficient to establish the title by which territorial sovereignty is validly acquired at a certain moment. It must also be shown that territorial sovereignty has continued to exist. This demonstration consists in the actual display of state activities..." And in the Clipperton Island case, the arbitrator pointed out that "the proof of an historic right of Mexico is not ILLEGIB
any manifestation of sovereignty over the Island, a sovereignty exercised until the expedition of 1897; and the mere conviction that the territory of Mexico, although general and of long
be retained". There are also many legal precedents that, according to Mackworth and Hyde, state in effect that continuity as a basis of territorial sovereignty has no foundation in international law. It would seem probable therefore that Honduras would lose any appeal to the International Court of Justice or an even moderately objective arbitral tribunal. This is, of course, why Honduras wants an Inter-American arbitration, counting on Latin American solidarity to bring home the prize.

CONFIDENTIAL

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Pg. 5 of A-221

From Tegucigalpa 1/19/66

2. We can distinguish six choices:

1) We can decide that sovereignty over the Swan Islands is not worth jeopardizing U.S. policy objectives in Honduras and Latin America and agree to work out a method by which we exchange sovereignty over the Swan Islands for a quid pro quo that would, at a minimum, guarantee our rights to continue our operations on the Islands. The fact that the Swan Islands are totally useless to Honduras makes the problem simpler. Honduras wants the trappings of sovereignty, nothing else. It would be willing, even anxious, to lease the Islands to the United States, as it already has enough unexploited, undeveloped areas to occupy its attention for several lifetimes and once the emotional point of sovereignty is settled, two remote, barren, almost uninhabited pinpoints in the Caribbean Sea are most unlikely to become a cause celebre just because the United States has facilities there.

2) We can propose a United States/Honduran condominium over the Swan Islands. Of all the proposals that stop short of giving the islands to Honduras outright, this appears to us as the only solution that would have some appeal to Honduras. Our Congress might also favor this approach over course number one as the United States would not have to abandon its sovereignty over American territory; it would simply add a compliant partner.

3) We can decide that we want to keep the Islands but not at the price of adopting a posture that would materially damage United States/Honduran relations and we would therefore respond to a Honduran demarche by expressing our willingness to submit the case to the International Court of Justice. This course has several advantages: a) It is highly unlikely that Honduras will want to go to the Court because of the expense and because it may recognize that it does not have the strongest possible legal case; b) it would prove more difficult for anti-American elements to use the Swan Islands issue against us if the Ambassador could publicly declare, on appropriate occasions, our willingness to submit the issue to the very tribunal that only five years ago decided the Mosquitia issue in favor of Honduras. This last point can also be used with advantage when the GOH states its preference for arbitration within the Inter-American System to the International Court of Justice. The main obstacle to the above position and one which could prove insuperable, is the Presidential Communiqué in which we commit ourselves to seek a solution within the Inter-American System.

4) We can agree to submit the case to arbitration under OAS auspices. While this might strengthen the Inter-American

CONFIDENTIAL

CONFIDENTIALPg. 6 of A-221
From Tegucigalpa 1/19/60

System, we would be running a much greater risk of an adverse decision.

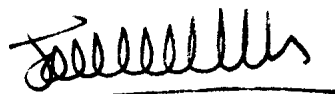
5) We can decide that when approached we will plainly tell the GOH that the Islands are under United States sovereignty and there is no prospect for change;

6) Our present position, which seems to consist of a willingness to listen but with no intention to negotiate.

Regarding the fifth choice, it is an article of faith in Honduras that the joint Kennedy-Villeda Morales announcement meant that the United States would renounce its claim to the Swan Islands. A definite turn-down would provoke anti-U.S. attitudes among both incumbent and opposition political groups that would strike a responsive chord throughout Honduras. The immediate effect could be to reduce our capacity to influence the Government of Honduras during a period of crucial political and economic transition. This choice might, however, prove preferable to the sixth option, for once the GOH musters the determination to actually prepare a demarche and send a delegation it will, having President Kennedy's commitment in mind, have convinced itself that the United States will immediately concede the brilliance of its argumentation and the rectitude of its cause. Each member will see himself returning to Honduras a national hero and by taking no decision we will have begun the disintegration of U.S.-Honduran relations.

RECOMMENDATION:

That the Department restudy the problem, particularly in the light of our over-all goals at the B.A. Conference, and seek to find a solution that would remove this continuing irritant to United States-Honduran relations.



Joseph John Jova

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